

1 Chant Yedalian, State Bar No. 222325
chant@chant.mobi
2 CHANT & COMPANY
A Professional Law Corporation
3 1010 N. Central Ave.
Glendale, CA 91202
4 Phone: 877.574.7100
Fax: 877.574.9411

5 Counsel for Plaintiff
6
7
8
9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 LARRY TRAN, on behalf of himself)
13 and all others similarly situated,)

14 Plaintiff,)

15 v.)

16 LIVING SPACES FURNITURE,)
17 LLC (d/b/a Living Spaces); and)
DOES 1 through 10, inclusive,)

18 Defendants.)
19 _____

Case No.

CLASS ACTION COMPLAINT

JURY DEMAND

[15 U.S.C. §§ 1681 *et seq.*]

20
21
22
23
24 Plaintiff, by his counsel of record, brings this action on his own behalf and
25 on behalf of all others similarly situated, and alleges the following upon personal
26 knowledge, or where there is not personal knowledge, upon information and
27 belief:
28

INTRODUCTION

1
2 1. In 2003, Congress passed and the President signed, the Fair and
3 Accurate Credit Transactions Act ("FACTA") to assist in the prevention of
4 identity theft and credit and debit card fraud. In the statement provided by the
5 President during the signing of the bill, the President declared that:

6 "This bill also confronts the problem of identity theft. A growing
7 number of Americans are victimized by criminals who assume their
8 identities and cause havoc in their financial affairs. With this
9 legislation, the Federal Government is protecting our citizens by
10 taking the offensive against identity theft."

11 2. A main provision of FACTA (codified as 15 U.S.C. § 1681c(g) of
12 the Fair Credit Reporting Act), provides that:

13 "**no person** that accepts credit cards or debit cards for the
14 transaction of business **shall print more than the last 5 digits of**
15 **the card number or the expiration date upon any receipt provided**
16 **to the cardholder** at the point of the sale or transaction."

17 3. The law gave merchants who accept credit and or debit cards up to
18 three years to comply with its requirements, requiring full compliance with its
19 provisions no later than December 4, 2006. Although LIVING SPACES
20 FURNITURE, LLC (d/b/a Living Spaces), and the other defendants herein had
21 up to three years to comply, Defendants have willfully violated this law and failed
22 to protect Plaintiff and others similarly situated against identity theft and credit
23 and debit card fraud by printing more than the last 5 digits of the card number and
24 the name of the cardholder on receipts provided to debit card and credit card
25 cardholders transacting business with Defendants.

26 4. This is a direct violation of FACTA. As the Ninth Circuit has
27 explained: "In fashioning FACTA, Congress aimed to 'restrict the amount of
28

1 information available to identity thieves.' 149 Cong. Rec. 26,891 (2003)
2 (statement of Sen. Shelby)." *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d
3 708, 718 (9th Cir. 2010).

4 5. Plaintiff on behalf of himself and all others similarly situated brings
5 this action against LIVING SPACES FURNITURE, LLC (d/b/a Living Spaces),
6 and DOES 1 through 10 (collectively referred to as "Defendants") based on
7 Defendants' violations of 15 U.S.C. §§ 1681 *et seq.*

8 6. Plaintiff seeks, on behalf of himself and the class, statutory damages,
9 punitive damages, costs and attorney fees, all of which are expressly made
10 available by statute, 15 U.S.C. §§ 1681 *et seq.*, for Defendants' unlawful practice
11 of violating FACTA's provisions intended to safeguard against identity theft and
12 credit and debit card fraud.

13 14 **JURISDICTION AND VENUE**

15 7. This Court has federal question jurisdiction pursuant to 28 U.S.C. §
16 1331 and 15 U.S.C. § 1681p.

17 8. Plaintiff's claims asserted herein arose in this judicial district and all
18 Defendants do business in and reside in this judicial district.

19 9. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)
20 and (c) in that defendant LIVING SPACES FURNITURE, LLC (d/b/a Living
21 Spaces), has done and continues to do business, and intentionally avails itself of
22 the markets within this district, including Orange County, California, it owns,
23 manages, maintains and or operates several physical retail stores within this
24 district, and this is a class action case in which a substantial part of the acts and
25 omissions giving rise to the claims occurred within this judicial district, including
26 Orange County, California.

PARTIES

10. Plaintiff, LARRY TRAN, is and at all times relevant hereto was a resident of the State of California.

11. Defendant LIVING SPACES FURNITURE, LLC (d/b/a Living Spaces) is a limited liability company organized and existing under the laws of the State of Delaware. LIVING SPACES FURNITURE, LLC (d/b/a Living Spaces), owns, manages, maintains and or operates several retail stores offering various goods and services for sale to the public.

12. At all times mentioned in this Complaint, Defendants and each of them were the agents, employees, joint venturer, and or partners of each other and were acting within the course and scope of such agency, employment, joint venturer and or partnership relationship and or each of the Defendants ratified and or authorized the conduct of each of the other Defendants.

13. Plaintiff does not know the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff is informed and believes that each of the DOE defendants was in some manner legally responsible for the wrongful and unlawful conduct and harm alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these defendants when they have been ascertained, along with appropriate charging allegations.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this class action on behalf of himself and all other persons similarly situated pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

15. The class which Plaintiff seeks to represent is defined as:

All consumers to whom Defendants, within two years from the date

1 of filing this action, provided an electronically printed receipt at the
2 point of a sale or transaction at any of Defendants' stores, on which
3 receipt Defendants printed more than the last 5 digits of the
4 consumer's credit card or debit card number (the "CLASS").¹

5 16. Excluded from the CLASS are Defendants and their directors,
6 officers and employees.

7 17. Numerosity (Fed. R. Civ. P. 23(a)(1)): The CLASS is so numerous
8 that joinder of all individual members in one action would be impracticable. The
9 disposition of their claims through this class action will benefit both the parties
10 and this Court.

11 18. Plaintiff is informed and believes and thereon alleges that there are,
12 at a minimum, thousands (*i.e.*, two thousand or more) of members that comprise
13 the CLASS.

14 19. The exact size of the CLASS and identities of individual members
15 thereof are ascertainable through Defendants' records, including but not limited
16 to Defendants' sales and transaction records.

17 20. Members of the CLASS may be notified of the pendency of this
18 action by techniques and forms commonly used in class actions, such as by
19 published notice, e-mail notice, website notice, first-class mail, or combinations
20 thereof, or by other methods suitable to this class and deemed necessary and or
21 appropriate by the Court.

22 21. Typicality (Fed. R. Civ. P. 23(a)(3)): Plaintiff's claims are typical of
23 the claims of the entire CLASS. The claims of Plaintiff and members of the
24 CLASS are based on the same legal theories and arise from the same unlawful
25 conduct.

26
27 ¹ Plaintiff reserves the right to amend or otherwise modify the CLASS
28 definition and/or add subclasses.

1 22. Plaintiff and members of the CLASS were each customers of
2 Defendants, each having made a purchase or transacted other business with
3 Defendants within two years from the date of filing this action, using a credit and
4 or debit card. At the point of such sale or transaction with Plaintiff and members
5 of the CLASS, Defendants provided to Plaintiff and each member of the CLASS
6 a receipt in violation of 15 U.S.C. §1681c(g) (*i.e.*, a receipt on which is printed
7 more than the last 5 digits of the credit card or debit card number).

8 23. Common Questions of Fact and Law (Fed. R. Civ. P. 23(a)(2) and
9 (b)(3)): There are a well-defined community of interest and common questions
10 of fact and law affecting the members of the CLASS.

11 24. The questions of fact and law common to the CLASS predominate
12 over questions which may affect individual members and include the following:

13 (a) Whether Defendants' conduct of providing Plaintiff and the
14 CLASS with sales or transaction receipts whereon Defendants printed more than
15 the last 5 digits of the card number violated the FACTA, 15 U.S.C. §§ 1681 *et*
16 *seq.*;

17 (b) Whether Defendants' conduct was willful; and

18 (c) Whether Plaintiff and the CLASS are entitled to statutory
19 damages, punitive damages, costs and or attorney fees for Defendants' acts and
20 conduct.

21 25. Adequacy of Representation (Fed. R. Civ. P. 23(a)(4)): Plaintiff is
22 an adequate representative of the CLASS because his interests do not conflict
23 with the interests of the CLASS which Plaintiff seeks to represent. Plaintiff will
24 fairly, adequately, and vigorously represent and protect the interests of the
25 CLASS and has no interests antagonistic to the CLASS. Plaintiff has retained
26 counsel who is competent and experienced in the prosecution of class action
27 litigation.

1 26. Superiority (Fed. R. Civ. P. 23(b)(1) and 23(b)(3)): A class action
2 is superior to other available means for the fair and efficient adjudication of the
3 claims of the CLASS. While the aggregate damages which may be and if
4 awarded to the CLASS are likely to be substantial, the actual damages suffered
5 by individual members of the CLASS are relatively small. As a result, the
6 expense and burden of individual litigation makes it economically infeasible and
7 procedurally impracticable for each member of the CLASS to individually seek
8 redress for the wrongs done to them. Plaintiff does not know of any other
9 litigation already commenced by or against any member of the CLASS
10 concerning Defendants' printing of more than the last 5 digits of the card number
11 on customer receipts. The likelihood of individual CLASS members prosecuting
12 separate claims is remote. Individualized litigation would also present the
13 potential for varying, inconsistent or contradictory judgments, and would increase
14 the delay and expense to all parties and the court system resulting from multiple
15 trials of the same factual issues. In contrast, the conduct of this matter as a class
16 action presents fewer management difficulties, conserves the resources of the
17 parties and the court system, and would protect the rights of each member of the
18 CLASS. Plaintiff knows of no difficulty to be encountered in the management
19 of this action that would preclude its maintenance as a class action.

20
21 **FIRST CAUSE OF ACTION**

22 **For Violation of 15 U.S.C. §§ 1681 *et seq.***

23 **(On Behalf of Plaintiff and the CLASS**

24 **as against all Defendants including DOES 1 through 10)**

25 27. Plaintiff hereby incorporates by reference the allegations contained
26 in this Complaint.

27 28. Plaintiff asserts this claim on behalf of himself and the CLASS
28

1 against Defendants and each of them.

2 29. Title 15 U.S.C. § 1681c(g)(1) provides that:

3 **"no person** that accepts credit cards or debit cards for the
4 transaction of business **shall print more than the last 5 digits of**
5 **the card number or the expiration date upon any receipt provided**
6 **to the cardholder** at the point of the sale or transaction."

7 30. By its express terms, 15 U.S.C. § 1681c(g)(1) applies to "any cash
8 register or other machine or device that electronically prints receipts for credit
9 card or debit card transactions" after December 3, 2006 (15 U.S.C. §
10 1681c(g)(3)).

11 31. Defendants transact business in the United States and accept credit
12 cards and or debit cards in the course of transacting business with persons such
13 as Plaintiff and members of the CLASS. In transacting such business, Defendants
14 use cash registers and or other machines or devices that electronically print
15 receipts for credit card and/or debit card transactions.

16 32. After December 3, 2006, and within two years from the date of filing
17 this action, Defendants, at the point of a sale or transaction with Plaintiff LARRY
18 TRAN, provided Plaintiff LARRY TRAN with one or more electronically printed
19 receipts on each of which Defendants printed more than the last 5 digits of his
20 credit card or debit card number and Plaintiff's name.

21 33. After December 3, 2006, and within two years from the date of filing
22 this action, Defendants, at the point of a sale or transaction with members of the
23 CLASS, provided each member of the CLASS with one or more electronically
24 printed receipts on each of which Defendants printed, for each respective CLASS
25 member, more than the last 5 digits of the credit card or debit card number and the
26 cardholder's name.

27 34. As set forth above, FACTA was enacted in 2003 and gave merchants
28

1 who accept credit and or debit cards up to three years to comply with its
2 requirements, requiring full compliance with its provisions no later than
3 December 4, 2006.

4 35. Defendants and each of them knew of and were well informed about
5 the law, including specifically FACTA's requirements concerning the truncation
6 of credit and debit card numbers and prohibition on the printing of expiration
7 dates.

8 36. For example, but without limitation, several years ago, VISA,
9 MasterCard, the PCI Security Standards Council (a consortium founded by VISA,
10 MasterCard, Discover, American Express and JCB), companies that sell cash
11 register and other devices for the processing of credit or debit card payments,
12 companies that sell software to operate payment card devices, companies that
13 maintain and repair hardware or software used to process payment card
14 transactions, and other entities informed Defendants and each of them about
15 FACTA, including its specific requirements concerning the truncation of credit
16 and debit card numbers and prohibition on the printing of expiration dates, and
17 Defendants' need to comply with same.

18 37. Other entities, including but not limited to Defendants' merchant
19 bank (also known as the acquiring bank or acquirer) which processes credit and
20 debit card payments for transactions occurring at Defendants' store(s), likewise
21 informed Defendants and each of them about FACTA, including its specific
22 requirements concerning the truncation of credit and debit card numbers and
23 prohibition on the printing of expiration dates, and Defendants' need to comply
24 with same.

25 38. In addition, many companies such as VISA and MasterCard devised
26 and implemented policies well before the operative date of FACTA's
27 requirements, wherein such policies VISA, MasterCard and others required
28

1 Defendants (and informed Defendants of the requirements) to truncate credit and
2 debit card numbers and prevent the printing of expiration dates on receipts. In
3 addition, these companies also publically announced some of these requirements.
4 For example, on March 6, 2003, VISA USA's CEO, Carl Pascarella, held a press
5 conference on Capitol Hill with Senators Dianne Feinstein, Judd Gregg, Jon
6 Corzine and Patrick Leahy, and publically announced Visa USA's new truncation
7 policy to protect consumers from identity theft. At the March 2003 press
8 conference, Mr. Pascarella explained, as follows:

9 "Today, I am proud to announce an additional measure to
10 combat identity theft and protect consumers. **Our new receipt**
11 **truncation policy will soon limit cardholder information on**
12 **receipts to the last four digits of their accounts.** The card's
13 expiration date will be eliminated from receipts altogether. This is
14 an added security measure for consumers that doesn't require any
15 action by the cardholder. We are proud to be the first payments
16 brand to announce such a move to protect cardholders' identities by
17 restricting access to their account information on receipts.

18 **The first phase of this new policy goes into effect July 1,**
19 **2003 for all new terminals.** I would like to add, however, that even
20 before this policy goes into effect, **many merchants have already**
21 **voluntarily begun truncating receipts, thanks to groundwork**
22 **that we began together several years ago.**

23 Receipt truncation is good news for consumers, and bad news
24 for identity thieves. Identity thieves thrive on discarded receipts and
25 documents containing consumers' information such as payment
26 account numbers, addresses, Social Security numbers, and more.
27 Visa's new policy will protect consumers by limiting the information
28

1 these thieves can access.” (Statements made by VISA USA’s CEO,
 2 Carl Pascarella at a March 6, 2003 press conference held at Capitol
 3 Hill with Senators Dianne Feinstein, Judd Gregg, Jon Corzine and
 4 Patrick Leahy.)

5 39. Moreover, the Government, through the Federal Trade Commission
 6 (“FTC”), provided notice to businesses on no less than three separate occasions
 7 in 2007 reminding them of the requirement to truncate credit and debit card
 8 information on receipts. Defendants were informed of and knew about these
 9 notices from the FTC. In one such notice, entitled “FTC Business Alert” “Slip
 10 Showing? Federal Law Requires All Businesses to Truncate Credit Card
 11 Information on Receipts,” and dated May 2007, the FTC reminded businesses,
 12 among other things, of the following:

13 “What’s on the credit and debit card receipts you give your
 14 customers? The Federal Trade Commission (FTC), the nation’s
 15 consumer protection agency, says it’s time for companies to check
 16 their receipts and make sure they’re complying with a law that’s
 17 been in effect for all businesses since December 1, 2006.

18 According to the federal Fair and Accurate Credit Transaction
 19 Act (FACTA), the electronically printed credit and debit card
 20 receipts you give your customers must shorten — or truncate — the
 21 account information. **You may include no more than the last five**
 22 **digits of the card number**, and you must delete the card’s
 23 expiration date. For example, a receipt that truncates the credit card
 24 number and deletes the expiration date could look like this:

25 ACCT:*****12345

26 EXP:****

27 Why is it important for businesses to make sure they’re
 28

1 complying with this law? Credit card numbers on sales receipts are
2 a “golden ticket” for fraudsters and identity thieves. Savvy
3 businesses appreciate the importance of protecting their customers
4 — and themselves — from credit card crime.”

5 40. Despite knowing and being repeatedly informed about FACTA and
6 the importance of truncating credit and debit card numbers and preventing the
7 printing of expiration dates on receipts, and despite having had over three years
8 to comply with FACTA’s requirements, Defendants and each of them knowingly
9 willfully, intentionally, and recklessly violated FACTA’s requirements by, *inter*
10 *alia*, printing more than the last 5 digits of the card number and the name of the
11 cardholder upon the receipts provided to the cardholders with whom they
12 transact business.

13 41. Defendants’ business peers and competitors brought their credit and
14 debit card receipt printing processes in compliance with FACTA’s requirements
15 by, for example, doing things such as programming their card machines and
16 devices to prevent them from printing more than the last five digits of the card
17 number and or the expiration date upon the receipts provided to the cardholders.
18 Defendants could have readily done the same.

19 42. Instead, Defendants knowingly, willfully, intentionally, and
20 recklessly disregarded FACTA’s requirements and used cash registers and or
21 other machines or devices that printed receipts in violation of FACTA.

22 43. Defendants knowingly, willfully, intentionally, and recklessly
23 violated FACTA in conscious disregard of the rights of Plaintiff and the CLASS.

24 44. Defendants have also harmed Plaintiff and the CLASS by exposing
25 them to at least an increased risk of identity theft and credit and or debit card
26 fraud.

27 45. As a result of Defendants’ willful violations of FACTA, Defendants
28

1 are liable to Plaintiff and each member of the CLASS in the statutory damage
2 amount of "not less than \$100 and not more than \$1,000" for each violation. (15
3 U.S.C. § 1681n.)

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for:

7 1. An order certifying the CLASS and appointing Plaintiff as the
8 representative of the CLASS, and appointing counsel of record for Plaintiff as
9 counsel for the CLASS;

10 2. An award to Plaintiff and the CLASS of statutory damages pursuant
11 to 15 U.S.C. § 1681n for Defendants' willful violations (up to but not exceeding
12 the fullest extent allowed under the Constitution of the United States);

13 3. An award to Plaintiff and the CLASS of punitive damages pursuant
14 to 15 U.S.C. § 1681n (up to but not exceeding the fullest extent allowed under
15 the Constitution of the United States);

16 4. Payment of costs of suit herein incurred pursuant to, *inter alia*, 15
17 U.S.C. § 1681n;

18 5. Payment of reasonable attorney's fees pursuant to, *inter alia*, 15
19 U.S.C. § 1681n; and

20 6. For such other and further relief as the Court may deem proper.
21

22 Dated: March 6, 2015

23 CHANT & COMPANY
A Professional Law Corporation

24 By: 

25 CHANT YEDALIAN
26 Counsel for Plaintiff
27
28

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

Dated: March 6, 2015

CHANT & COMPANY
A Professional Law Corporation

By: 
CHANT YEDALIAN
Counsel for Plaintiff